* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ FAO 595/2001

MURLI DHARAN ..... Appellant
Through Mr. Puneet Bhatnagar, Advocate

versus

SUMANGLA ..... Respondent
Through Ms. Chandra Kumari with
Ms.Meenashi Mohan, Advocates

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

O R D E R

S.Muralidhar, J. (open court)

1. This appeal is directed against the judgment dated 31.10.2001 of the learned Additional District Judge, Delhi in H.M.A. No 21/2001/92 whereby the Trial Court had dismissed the appellant's petition seeking dissolution of marriage under Section 13 of the Hindu Marriage Act ('Act') on the ground of cruelty.

2. The appellant sought to base the petition on three or four instances. It is first urged that the respondent had started misbehaving with the petitioner after few months of the marriage. It was alleged by the appellant that the respondent

had developed illicit relationship with somebody. Thirdly it was alleged that the respondent had told the appellant and his relatives that the child born to the parties on 28.8.1990 from somebody else. Fourthly, it was alleged that the respondent had not allowed the appellant to come near and perform the marital relations. Lastly, it is alleged that the respondent gave some poisonous substance in the tea to the petitioner. There was also an allegation that the respondent had started removing her belongings from the residence of the petitioner.

3. The appellant has examined himself, his brother-in-law and his employer as his witnesses. The respondent has examined herself and her family friends as her witnesses.

4. The Trial Court framed the following issues:

(i) Whether the respondent has treated the petitioner with cruelty as alleged? OPP.

(ii) Whether the petitioner is taking the benefit of his own wrongs as alleged in written statement? OPR

(iii) Whether the petitioner has condoned the acts of cruelty of respondent as alleged? OPR

(iv) Relief.

5. The Trial Court after examining the evidence on record, came to the following conclusion:

> (i) The petitioner did not give any details of the alleged misbehaviour like date, time, month or any specific occasion. Even the name of the

relatives with whom the respondent misbehaved has not been given.

(ii) The pleadings were absolutely silent on the issue as regards the respondent had developed illicit relationship with somebody.

(iii) The allegations that the respondent had told the appellant that the born child to the parties again absolutely vague and general in nature.

(iv) At one place in this petition, it has been mentioned that the respondent did not allow the petitioner to perform his marital relations and it was stated tat he was living separately from the respondent six months prior to tie filing of the petition. The facts on record showed that the respondent had conceived twice from the petitioner, the first conception was got aborted and the second conception was delivered by the respondent. Therefore, there was no basis of his allegation as well.

(v) As regards the allegation of poisonous, the appellant failed to disclose as to when he had been administered poisonous in the tea of the petitioner and what treatment had been taken to safe his life. It is not clear from the evidence as to why the respondent

had removed any such articles from the residence of the petitioner.

6. As regards the evidence on the other issues, the Trial Court held that there was no material on record to show that the petitioner is tried to take benefit of his own wrongs. On the third issue, the Trial Court again held that the respondent had failed to prove that the parties lived together as husband and wife even after filing of the present petition. Nevertheless, in view of the findings on Issue No.1, the petition was dismissed.

7. Learned counsel for the appellant refers to the evidence of PW-1 before the Trial Court on Issue No.1. The relevant portion of the said evidence reads as under:

> "Respondent started misbehaving after few months of their marriage. She is employed in CDR in Medical Centre. She developed illicit relations with some body. And she told me that the child is not from him and it is from somebody. The respondent told the above said thing in the presence of my relations. She/respondent did not allow the petitioner to come near her and was not to allow her to perform the marital relations. She did not allow for the last about one year from the date of the petition. Thereafter, she gave some poisonous substance in tea. After taking the tea I started g which saved my life. She started removing the articles of the house to the relations and friends. I am living separately for six months prior to the filing of the petition. I told this thing to her brother but she did not accede to his request and she thrown me out of the house. I have not been living together or cohabiting with her since of the filing of the petition. After the filing of the petition she filed a

> complaint in dowry cell against myself, my sister and my brother-in-law. She also made a complaint in the office of my brother-in-law. I can identify the signatures of respondent. I have seen her writing and signing."

8. A perusal of the said evidence show that ..... on the pleading on record in that, even in the examination-in-chief, the petitioner is unable to specify the name of the person with whom the respondent alleged to have illicit relationship or give any particular details of any instance of cruelty treatment of the appellant by the respondent. The evidence of the appellant even by way of examination-in-chief inspires a little confidence in the case by the appellant having made out against the respondent. This Court is unable to give any contradictory conclusion in that arrived by the Trial Court in the matter and no infirmity can be found in the findings of the Trial Court that the pleadings as well as depositions of PW-1 is wholly vague in relation to the instances upon which the petition of the appellant is based.

9. For the above reasons, there is no merit at all and it is dismissed with costs of Rs.5,000/- which will be paid by the appellant to the respondent within a period of four weeks.

S. MURALIDHAR, J

FEBRUARY 20, 2007
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